

AN ORDINANCE 101051

APPROVING THE TERMS AND CONDITIONS OF A PURCHASE AND SALE AGREEMENT WITH FAULKNER USA, INC., A DELAWARE CORPORATION ("DEVELOPER"), SETTING FORTH CERTAIN OBLIGATIONS OF THE CITY AND THE DEVELOPER WITH RESPECT TO: (A) THE CREATION OF A TWO (2) UNIT COMMERCIAL CONDOMINIUM REGIME ON THE SITE OF THE NEW CONVENTION CENTER HOTEL PROJECT THAT WILL INCLUDE A LOWER COMMERCIAL UNIT FOR THE NEW CONVENTION CENTER HOTEL AND A MULTI-FLOOR COMMERCIAL UNIT LOCATED ABOVE SUCH HOTEL WHICH MAY BE FURTHER SUBDIVIDED BY DEVELOPER INTO RESIDENTIAL CONDOMINIUM UNITS PURSUANT TO A SEPARATE, SUBORDINATE RESIDENTIAL CONDOMINIUM REGIME SO THAT CONDOMINIUM UNITS MAY BE SOLD BY DEVELOPER; (B) THE SALE OF THE CITY'S INTERESTS IN SUCH COMMERCIAL UPPER UNIT TO THE DEVELOPER, SUBJECT TO COMPLIANCE WITH CHAPTER 272 OF THE TEXAS LOCAL GOVERNMENT CODE OR EXCEPTIONS THERETO; AND (C) THE DEVELOPER'S OBLIGATION TO TIMELY DESIGN, DEVELOP AND CONSTRUCT CERTAIN IMPROVEMENTS WITHIN SUCH COMMERCIAL UPPER UNIT AND THE ASSOCIATED LIMITED AND COMMON ELEMENTS, ALL OF THE FOREGOING BEING SUBJECT TO CITY COUNCIL'S APPROVAL OF THE FINAL PROJECT DOCUMENTS AND AMENDMENTS TO EXISTING PROJECT DOCUMENTS FOR THE NEW CONVENTION CENTER HOTEL PROJECT PREVIOUSLY APPROVED BY CITY COUNCIL PURSUANT TO ORDINANCE NO. 100686 ON APRIL 14, 2005; DECLARING RELATED PROPERTIES SURPLUS TO THE CITY'S NEEDS; AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT UPON THE INCLUSION OF THE SUBJECT PROPERTY WITHIN THE BOUNDARIES OF THE INNER CITY TIRZ #11.

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WHEREAS, the City of San Antonio, Texas (the "City") owns and operates a convention center known as the Henry B. Gonzales Convention Center (the "Convention Center"); and

WHEREAS, on June 8, 2005, the City entered into a Project Agreement, a Ground Lease and License Agreement and other agreements identified and collectively referred to as the "City Agreements" in Ordinance No. 100686 dated April 24, 2005 with Hotel Investments, L.P. a legal entity formed by FaulknerUSA, Inc. (the "Developer") for the purpose of designing, developing, constructing, equipping, furnishing, opening and operating a full-service headquarters hotel and related parking (the "Convention Center Hotel Project") on land leased from the City located adjacent to the Convention Center (as more specifically described in the Ground Lease and License Agreement, the "Site"); and

WHEREAS, the Developer has proposed to design, build and offer for sale residential condominium units to be located in the airspace immediately above the currently-contemplated new convention center hotel, by adding multiple upper floors and raising the height of the new convention center hotel, without interference with the Convention Center Hotel Project (the "SACCH Condominium Project"); and

WHEREAS, the City has determined that construction and operation of residential condominiums in such location will enhance the Convention Center Hotel Project's promotion of economic development and stimulation of business and commercial activity in the City; and

WHEREAS, the City desires to enter into a Purchase and Sale Agreement with Developer setting forth certain obligations of the City and the Developer with respect to the following:

- (a) The creation of a two (2) unit commercial condominium regime created under the Uniform Condominium Act, Chapter 82 of the Texas Property Code ("TUCA"), on the Site, with the City initially to own both such commercial condominium units. The new Convention Center Hotel Project will be located within the lower commercial condominium unit. Residential condominium units will be located within the multi-floor condominium commercial unit located above the lower hotel unit (the "Upper Commercial Condominium Unit"), following the Developer's subdivision of such upper unit into residential units and declaration of a separate, subordinate residential condominium regime created under TUCA so that residential condominium units may be sold by the Developer;
- (b) The sale of the City's interests in the Upper Commercial Condominium Unit to Developer (the "Upper Unit Sale") upon the satisfaction of various conditions; and
- (c) Entry into condominium and project documents at closing of the Purchase and Sale Agreement setting forth the Developer's obligation to timely design, develop and construct certain improvements within the Upper Commercial Condominium Unit and the associated limited and common elements; and

WHEREAS, closing of the Upper Unit Sale under the Purchase and Sale Agreement will be subject to, among other things, City Council's prior approval of the final condominium and project documents for the SACCH Condominium Project and amendments to, among other things, the existing City Agreements for the new Convention Center Hotel Project as necessary to coordinate the SACCH Condominium Project and the Convention Center Hotel Project; and

WHEREAS, the Purchase and Sale Agreement has been presented to the City Council in substantially final form; and

WHEREAS, on December 14, 2000, the City Council of the City approved Ordinance No. 93101, establishing the Tax Increment Reinvestment Zone Number Eleven (11), City of San Antonio, Texas (the "Zone") and the Board of Directors for the Zone (the "Board") in accordance with the Tax Increment Financing Act (the "TIFA"), as amended (V.T.C.A., Tax Code, Chapter 311), to promote development and redevelopment in the Zone through the use of tax increment financing, which development and redevelopment would not otherwise occur solely through private investment in the reasonably foreseeable future; and

WHEREAS, in 2003, the Board recognized that not all of the existing and potential residential and commercial properties in the area of the Zone were included as properties contributing to the tax increment revenue of the Zone in the Project and Financing Plans at the time of creation of the Zone; and

WHEREAS, on December 10, 2003, the Board adopted an amendment to the Final Project Plan for the Zone, by increasing the geographic area of the Zone; and

WHEREAS, on December 18, 2003, by Ordinance No. 98568, pursuant to the requirements of the TIFA, the City Council approved the Board's amendment to the Final Project Plan; and

WHEREAS, the City supports the Board's purposes, and recognizes that there are new and existing projects that could be undertaken in the Zone if additional funds were available; and

WHEREAS, in connection with the contemplated SACCH Condo Project and related transactions described above, the City wishes to expand the boundaries of the Zone to add the Site, subject to affirmative action by the Board, and subsequent approval by the passage of a duly authorized ordinance, in accordance with the requirements of the TIFA; and

WHEREAS, in connection with the contemplated transactions described above, the City wishes to declare the Upper Commercial Condominium Unit surplus to the City's needs so that upon placement within the boundaries of the Zone it may be sold to the Developer pursuant to Chapter 272.001(b)(6) of the Texas Local Government Code; and

WHEREAS, it is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO, TEXAS:

SECTION 1. APPROVAL OF PURCHASE AND SALE AGREEMENT. The Purchase and Sale Agreement described in the recitals of this Ordinance, a copy of which is attached as Exhibit 1 is hereby approved in substantially the form presented at this meeting. The Interim City Manager or any Assistant City Manager designated by the Interim City Manager is authorized to approve any and all changes to the Purchase and Sale Agreement from the form presented and approved at this meeting, and such approval shall be evidenced by the signature of the Interim City Manager or an Assistant City Manager of the City thereon and the delivery of such executed Purchase and Sale

Agreement. The Interim City Manager and any Assistant City Manager of the City is authorized to execute and deliver the Purchase and Sale Agreement on behalf of the City, and, if required in the Purchase and Sale Agreement, the City Clerk of the City is authorized to attest the Interim City Manager's or any such Assistant City Manager's signature thereon, provided, however, that the foregoing authorization shall not be effective until after the date and time the Board approves expansion of the boundaries of the Zone to add the Site.

SECTION 2. AUTHORIZATION OF OTHER NECESSARY ACTIONS; SIGNATURES.

- (a) The Mayor, the Interim City Manager, any Assistant City Manager, the City Clerk and any other officer, employee, agent and official of the City designated by the Interim City Manager are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform and to take any and all action necessary to comply with the terms of the Purchase and Sale Agreement and any other related documents in order to facilitate the SACCH Condominium Project, including the execution of certificates, opinions, and the other documents necessary in connection therewith.
- (b) The Mayor, the Interim City Manager, any Assistant City Manager, the City Clerk and any other officer, employee, agent and official of the City designated by the Interim City Manager, and each of them shall be and they are expressly authorized, empowered, and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge, and deliver in the name and under the corporate seal and on behalf of the City all such instruments, documents and agreements, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the Purchase and Sale Agreement. In addition, prior to the closing of the Upper Unit Sale, the Mayor, the Interim City Manager, any Assistant City Manager, the City Clerk, the Finance Director, and all other officers and employees designated by the Interim City Manager are each hereby authorized and directed to approve any technical changes or corrections to this Ordinance or to the Purchase and Sale Agreements authorized and approved by this Ordinance necessary in order to correct any ambiguity or mistake, or properly or more completely document the transactions contemplated and approved by this Ordinance.
- (c) The Director of Convention Facility of the City is hereby authorized and designated as the "City Representative" for the purposes of the Purchase and Sale Agreement.

SECTION 3. INCLUSION OF SITE WITHIN BOUNDARIES OF TAX INCREMENT REINVESTMENT ZONE NUMBER ELEVEN, CITY OF SAN ANTONIO, TEXAS. The Site is hereby authorized for placement within the boundaries of the Zone, subject to affirmative action by the Board, and subsequent approval by the passage of a duly authorized ordinance, in accordance with the requirements of the Act.

SECTION 4. SALE OF SURPLUS UPPER COMMERCIAL CONDOMINIUM UNIT. City Council hereby (i) declares the Upper Commercial Condominium Unit as surplus, and (ii) authorizes the sale of the surplus Upper Commercial Condominium Unit, to be located in the airspace immediately above the new Convention Center Hotel Project at the Site (a 2.971 acre parcel out of Lot 12, Block 3, New City Block 13814, in the 600 Block of East Market Street, San Antonio, Bexar County, Texas), in accordance with the terms and conditions of the Purchase and Sale Agreement and subject to the Developer and the City having met all conditions precedent to the closing, as more particularly set out in the Purchase and Sale Agreement, and provided, further, that the foregoing authorization shall not be effective until after the date and time the Board approves expansion of the boundaries of the Zone to add the Site.

SECTION 5. SEVERABILITY. If any provision of this Ordinance or application thereof to any circumstance shall be held invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and the governing body hereby declares that this Ordinance would have been enacted without such invalid provision.

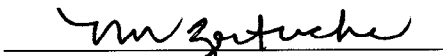
SECTION 6. EFFECTIVE DATE. This ordinance shall be effective on and after the tenth day after passage hereof.

PASSED AND APPROVED this 16th day of June 2005.



**MAYOR
EDWARD D. GARZA**

ATTEST 
City Clerk

APPROVED AS TO FORM: 
Acting City Attorney

Agenda Voting Results

Name: 31.

Date: 06/16/05

Time: 06:00:27 PM

Vote Type: Multiple selection

Description: An Ordinance approving the terms and conditions of a Purchase and Sale Agreement with Faulkner USA, Inc., a Delaware Corporation ("Developer"), setting forth certain obligations of the City and the Developer with respect to: (A) the creation of a two (2) unit commercial condominium regime on the site of the new Convention Center Hotel Project that will include a lower commercial unit for the new Convention Center Hotel and a multi-floor commercial unit located above such Hotel which may be further subdivided by Developer into residential condominium units pursuant to a separate, subordinate residential condominium regime so that condominium units may be sold by Developer; (B) the sale of the City's interests in such commercial upper unit to the Developer, subject to compliance with Chapter 272 of the Texas Local Government Code or exceptions thereto; and (C) the Developer's obligation to timely design, develop and construct certain improvements within such commercial upper unit and the associated limited and common elements, all of the foregoing being subject to City Council's approval of the final project documents and amendments to existing project documents for the new Convention Center Hotel Project previously approved by City Council pursuant to Ordinance No. 100686 on April 14, 2005; declaring related properties surplus to the City's needs; and authorizing the City Manager to execute said agreement upon the inclusion of the subject property within the boundaries of the Inner City TIRZ #11. [Presented by Christopher J. Brady, Assistant City Manager; J. Rolando Bono, Interim City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. McNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
ENRIQUE M. BARRERA	DISTRICT 6		x		
JULIAN CASTRO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8	Not present			
KEVIN WOLFF	DISTRICT 9				x
CHIP HAASS	DISTRICT_10		x		
MAYOR ED GARZA	MAYOR		x		